The absence of an adequate doctrine of quasi-contract caused the unfortunate distinction between payments made in mistake of fact and payments in mistake of law which is not known in countries following the Roman Law and which has no rational justification. In the same way English law failed to do anything for the volunteer. who paid insurance premiums; (see *In re Leslie*[16], *Falcke v. Scottish Imperial Insurance Co.*[17]).

An interesting example of the difficulties that arise is found in *Sebel Products Ltd. v. Commissioners of Customs and Excise*[18]. There the learned Judge had to resort to a legal fiction to avoid an intolerable situation.

Prehistoric man untroubled by theory was able to invent general average; at a later period salvage was invented by the Courts. In modern times an excess of theory has prevented the Courts from dealing with other situations that have arisen. The doctine of *Ex parte James* is in its limited sphere in bankruptcy, etc., irrational. Its application has been spasmodic and also irrational. Surely those who paid insurance premiums had stronger claims in natural justice than the claimant in *In re Thellusson*. I have had to devote a lot of space in attempting to find out what exactly is the doctrine I am invited to apply. I think it would be wrong to extend its application.

I do not think that in the case under consideration there is any mistake of law or otherwise. The Municipal Commissioners were free to make presents to whom they liked. A present to the estate of a deceased employee who was bankrupt enured to the benefit of his creditors as a matter of law. There is nothing to show that the Municipal Commissioners laboured under any misapprehension. At a later period they decided to make presents to relatives instead of to creditors, as they were entitled to do. Once a payment was made it was complete and I do not consider that once the Official Assignee had received the money he was under any obligation or duty except to pay it out according to law. I do not think that once the payment was made the Municipal Commissioners could change its destination. I do not think that the Official Assignee was under any obligation, moral or otherwise, to have regard to a subsequent change of policy of the Municipal Commissioners.

Also I am not sure that in view of *Aiken v. Short*[19] even if there had been a mistake, the doctrine would apply to voluntary payment. In view of *Kerrison v. Glyn Mills, Currie & Co.*[20] and *Jones v. Waring and Gillow*[21] and also *Steam Saw Mills v. Baring Brothers*[22] the question is obscure.

There is also a distinction from earlier cases in that the money is paid out, cannot be recovered from the creditors and there is no prospect of further assets coming to hand.

To make any order in the circumstances would go beyond what was done in any other case. That point does not call for any decision at present. The motion must be dismissed.

Motion Dismissed.

TAN CHEE KONG v. LEE EE LIAT.

[Orig. Civ. Juris. (Taylor J.), June 14, 1949]

[Singapore — Civil Suit No. 116 of 1949]

Libel — Publication through post — Words "Ex-informer Kempeitai" — Quantum of damages.

The Defendant sent a letter addressed to the Plaintiff on the envelope on which were written the words:—

"To
Tan Chee Kong, Ex-Informer, Kempeitai,
61-B Eng Hoon Street, Singapore."

The letter was delivered in the ordinary course of the post to the Plaintiff's house.

Held: that the words "Ex-informer Kempeitai" are defamatory; that communication through the post office is sufficient publication but as the publication was limited in extent this fact materially reduces the quantum of damages.

ACTION FOR DAMAGES.

Eric Choa for the Plaintiff.

Defendant in person.

Taylor, J. : — In this action for libel the plaintiff is a clerk and the defendant a medical practitioner. The plaintiff received a letter addressed to himself at his home address and on the envelope the words "Ex-Informer — Kempeitai" were inserted between his name and the address. The letter was delivered in the ordinary course of the post to his house. The name was correctly spelt and the address is correctly given. The contents of the letter are not strictly relevant; it is sufficient to say it did not contain anything mitigating the libel carried on the cover. In my opinion, the words are a short way of saying that during the enemy occupation this man was an "informer" for the Kempeitai.

It is perfectly true that it was possible to work for the Japanese in various capacities without incurring odium. If it were said that Mr. So-and-So worked for the Japanese or that So-and-So consented to serve

in the Police under them I do not think that anyone would say that such an allegation was defamatory.

The Kempeitai was a quite separate function and furthermore the position of an "informer" is one which must be voluntary in almost every case. A man may be told by an Occupying Power that he should continue in the same position as before the war. He would be under two pressures, at least — one of public duty and economic pressure to feed his family. But if a man does not want to be an "informer" he is useless. He can say "I am very sorry I cannot get any information". The peculiar nature of the work of the Kempeitai cannot be done otherwise than voluntarily. I am therefore clearly of the opinion that the words are defamatory and hold the man up to hatred and contempt. Counsel for the plaintiff argued that the people who actually worked for the Kempeitai were hated at the time and are despised now. I think it is a generally true proposition.

There seems to have been some ill-feeling between the parties over the use by the Japanese of the defendant's motor car. There is little direct evidence about this but I think the appropriation of the car must be attributable to the Japanese officer rather than to the plaintiff who was only a local subordinate of a Japanese trading concern.

There is evidence that the plaintiff had some association with members of the Kempeitai and occasionally called at their office but there is not a scintilla of evidence that he was ever an informer, which is the real sting of the libel. The plaintiff may have been compelled to make these calls in relation to his employment by the Japanese firm. The defendant should have appreciated this for he himself was friendly with a Kempeitai officer whom he sometimes received in his private house.

A point has been made that inasmuch as Postal employees are sworn to secrecy there was no publication of the defamatory matter. This is a misconception; the rule of official secrecy might well prevent a postal worker from further publishing of the libel by repeating it outside his office and it might also prevent the communication of the libel by one postal worker to another in the course of duty from amounting to republication by the former but that does not affect the fact that the action of the defendant necessarily involved publication of the libel to each person concerned as it came to him. The argument is, however, of some assistance to the plaintiff. Though there was publication it was limited in extent and the matter is much less serious than publication in a newspaper or in any other form which would ordinarily reach a large number of people on whom no obligation of secrecy rested. This materially reduces the damages.

On the case as a whole I was clearly of opinion that the defendant had published a seriously defamatory libel on the plaintiff but that the publication was very limited in its scope. I assessed the damages at $300.00.

Judgment for the Plaintiff with Costs.